

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
Abens Ag & Construction, Inc.	NO. 2013-AQ- 17 NO. 2013-SW- 14

TO: Abens Ag & Construction, Inc.
Curt A. Abens, Registered Agent
32171 570th Street
Gilmore City, Iowa 50541

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Abens Ag & Construction, Inc., for the purpose of resolving violations pertaining to illegal open dumping and illegal open burning. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Amber Wolf
Iowa Department of Natural Resources
Field Office No. 3
1900 North Grand
Gateway North, Suite E17
Spencer, IA 51301-2200
Phone: 712-262-4177

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-6243

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to

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that part; Iowa Code sections 455B.134(9) and 455B.138(1), which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. On November 29, 2012, DNR Field Office 3 received an anonymous complaint that open burning of tires was occurring in a pit located in a field just east of the Pomeroy city wastewater lagoon. The complainant stated the burning had occurred on the evening of November 28, 2012. The complainant stated that heavy smoke was seen coming from the burn area.

2. Ms. Amber Wolf DNR Field Office 3 investigated the complaint on November 29, 2012. The field was located on agricultural land located east of the Pomeroy city wastewater lagoon, along 170th St. and within city limits (the site). At the site, Ms. Wolf observed demolition waste and dozens of tires still on fire at noon on November 29, 2012. The demolition debris and tires were burning in a large hole dug in the field. Ms. Wolf also observed a backhoe on the site, as well as a side dump semi trailer owned by Abens Ag & Construction, Inc. Pictures were taken to document the incident.

3. On November 30, 2012, Ms. Wolf contacted Curt Abens of Abens Ag & Construction, Inc., by phone. Mr. Abens informed Ms. Wolf that he was hired by Jon Olson to demolish a house in the city of Pomeroy, to haul the waste to a field east of town, and to dump it in a pit. Mr. Abens stated he and his employees did not start the contents on fire, and that there were no tires in the pit when they left the site.

4. Also, on November 30, 2012, Ms. Wolf contacted Jon Olson by phone. Mr. Olson informed Ms. Wolf that he and several members of the St. John Evangelical Lutheran Church in Pomeroy pooled their money to buy the property at 309 Geneva Street in Pomeroy and donated this property to the church. Mr. Olson said he acted alone when he hired Abens Ag & Construction, Inc., to demolish the house located at 309 Geneva Street. Mr. Olson stated that he instructed Abens Ag & Construction, Inc., to haul the demolition debris to the site and dump it there. Mr. Olson informed Ms. Wolf that he started the contents of the pit on fire in the afternoon on November 28, 2012, and that he left the site around 4:30 p.m. When he returned at 7:15 a.m. the next morning, he discovered that someone had dumped tires in the pit.

5. On December 12, 2012, Ms. Wolf again spoke with Mr. Olson by phone. Mr. Olson stated that he took the lead on the demolition project, and that he

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did not want any of the other members of the church held responsible. Mr. Olson acknowledged the dumping and burning of the solid waste took place at the site on property owned by his parents, Harold and Virginia Olson. Mr. Olson stated that he did not know that his actions were illegal. Mr. Olson mentioned starting his own investigation to find out where the tires originated.

6. On December 12, 2012, Ms. Wolf also contacted Mr. Abens by phone. Mr. Abens acknowledged the dumping and burning of solid waste took place on Mr. Olson's property. Mr. Abens also stated that he did not know these actions were illegal.

7. December 11, 2012, Notice of Violation letters (NOV) was sent to Mr. Jon Olson and Mr. Curt Abens for illegal open dumping of solid waste and illegal open burning of solid waste at the site.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The burning of tires is specifically prohibited. The illegal open burning of solid waste in this case demonstrates violations of this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

4. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The illegal open dumping of solid waste in this case demonstrates non-compliance with this provision.

5. The complainant observed heavy smoke coming from the site on the evening of November 28, 2012. Heavy smoke indicates the presence of particulate matter that exceeds the 40% opacity standard set forth in paragraph 567 IAC 23.3 (2) "d".

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V. ORDER

THEREFORE, DNR orders and Abens Ag & Construction, Inc., agrees to the following:

1. Abens Ag & Construction, Inc., shall pay a penalty of \$2,500.00 within 30 days of the date this order is signed by the Director.
2. Abens Ag & Construction, Inc., shall cease all illegal solid waste disposal activity and all illegal open burning of combustible materials at any location in the State of Iowa, and shall comply in the future with the regulations concerning disposal of solid waste and open burning.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$2,500.00 penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Abens Ag & Construction, Inc., received minimal economic benefit from this incident. Therefore, no amount is assessed for economic benefit.

Gravity of the Violation – The open burning of solid waste can release toxins that pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Further, the open burning of tires releases toxins into the air. Further, heavy smoke was reported coming from the site on the evening of November 28, 2012, which indicates particulate matter that exceeds the 40% opacity standard set forth in 567 IAC 23.3 (2) "d". Finally, illegal open dumping and illegal open burning threaten the integrity of DNR's environmental programs and efforts to protect the state's valuable natural resources. Therefore, \$1,500.00 is assessed for the gravity of the violations.

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Culpability – Abens Ag & Construction, Inc., has intentionally and knowingly allowed the open dumping and open burning of prohibited wastes. Although Mr. Abens stated that he was not aware that his actions were prohibited, it is his responsibility to be knowledgeable of the DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. For the above reasons \$1,000.00 is assessed for culpability.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Abens Ag & Construction, Inc. For that reason, Abens Ag & Construction, Inc., waives its rights to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

Chuck Gipp
Chuck Gipp
Iowa Department of Natural Resources

Dated this 21st day of
June, 2013.

Abens Ag & Construction, Inc. by
Curt Abens Pres.
Abens Ag & Construction, Inc.

Dated this 10 day of
June, 2013.

DNR Field Office 3; Anne Preziosi; VII.C.2